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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,299	01/10/2001	David Clarke Pollock	HEM 99/607 (A-2911)	9699
24131	7590	07/26/2004	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			PRONE, JASON D	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,299

Applicant(s)

POLLOCK ET AL.

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,7-11 and 22-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,5,7-11 and 22-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of the appeal brief filed on 26 April 2004, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Drawings

2. The drawings are objected to because Figure 1 and 2 are both referencing to the same symbol "δ". If the Figures were separated, it would be unclear what this symbol represents. Each Figure should have its own "δ". Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "gears", of claim 8, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of

any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 5, 7-11, and 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In regards to claims 1 and 10 paragraphs 3 and 5 respectively, the phrase "said subframe controlling a position of said cylinders in regard to the ribbon and therefore controlling a cutting length of the ribbon" is not clear. It is understood from the specification and Figure 3 that control unit (6) controls the cylinder (12), which in turn moves the subframe (9). Therefore, it is uncertain how the subframe controls the position of the cylinders and the length of the cut when it is clearly the control unit that controls all movement.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 5, 7-11, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fr. 470,543 in view of Spengler further in view of Shore et al. Fr.

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470,543 discloses the invention including a frame (Inherent), a pair of cylinders disposed opposite one another with a gap in-between (C and D), that the pair of cylinders includes a first cutting cylinder (C) having a periphery with a cutting knife disposed helically about the periphery (E), and a second cylinder (D) but fails to disclose one drive rotating the first cutting cylinder, a sub-frame having a pivot point, that the sub-frame supports the cylinders and first and second drives, a further drive connected to the sub-frame for pivoting the sub-frame about the pivot point, a control unit connected to and controlling the further drive and the one drive for controlling a rotational speed of the first cutting cylinder, a second drive rotates and mounts the second cylinder, that the first and second drives are motors, and that the first and second drives are gears, that a component of travel of a point of contact between the cylinders in a direction of travel of the work piece matches a speed of the work piece for cutting in a straight line, a sensor connected to the control unit and disposed in the travel path of the work piece, providing control signals to the control unit for controlling operation of the cylinders and monitoring the cutting operation, that the sensors detect an unacceptable cut, and that the control unit is a microprocessor. Spengler teaches one drive rotating the first cutting cylinder (Abstract), a sub-frame (32) having a pivot point (29), that the sub-frame supports the cylinders and first and second drives (Fig. 3), a further drive connected to the sub-frame for pivoting the sub-frame about the pivot point (45), a control unit connected to and controlling the further drive and the one drive for controlling a rotational speed of the first cutting cylinder (Column 5 lines 40-52), a second drive rotates and mounts the second cylinder (Abstract), that the first and

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second drives are motors (6), and that the first and second drives are gears (7), and that a component of travel of a point of contact between the cylinders in a direction of travel of the work piece matches a speed of the work piece for cutting in a straight line (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have provided Fr. 470,543 with a pivoting sub-frame and drives, as taught by Spengler, to allow for different angles to be cut into the work piece and to more efficiently run the cutting drums.

Shore et al. teaches a sensor, connected to the control unit and disposed in the travel path of the work piece, providing control signals to the control unit for controlling operation of the cylinders and monitoring the cutting operation, that the sensors detect an unacceptable cut, and that the control unit is a microprocessor (Column 1 lines 15-26). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have replaced the user input control unit of Fr. 470,543 in view of Spengler with the sensors and control unit as taught by Shore et al. in order to provide Fr. 470,543 in view of Spengler with a more accurate and faster control of the cutting conditions.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 5, 7-11, and 22-24 have been considered but are moot in view of the new ground(s) of rejection. In regards to the subject matter, from the Shore et al. patent, used in this office action. Even though the content relied upon is considered "prior art" by the Shore et al. patent, does not make is

un-usable. Using the Shore et al. patent to disclose this "prior art" would be the same if the document originally containing this "prior art" were used.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP
July 21, 2004



Allan N. Shoap
Supervisory Patent Examiner
Group 3700